IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 867 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTILAL NAGARDAS KANUDAWALA

Versus

STATE OF GUJARAT

Appearance:

MR SHALIN MEHTA, L.A. as Amicus Curiae for Petitioner

MS NANDINI JOSHI, AGP for Respondents No. 1-2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 23/10/2001

ORAL JUDGEMENT

1. Jayantilal Nagardas Kanudawala, petitioner has filed this petition praying that this Court may issue a writ of certiorari, a writ in the nature of mandamus or any other appropriate writ, order or direction, declaring Rule 8 of the Revenue Qualifying Examination Rules, 1970 (hereinafter referred to as `the Rules of 1970') and Rules 5 and 8 of the Gujarat Lower Revenue Qualifying Examination Rules, 1978 (hereinafter referred to as `the Rules of 1978') and other provisions of the above Rules of 1970 and the Rules of 1978 as ultra vires, illegal and null and void. He has further prayed that this Court may

set aside the apprehended orders of reversion of the petitioner and restraining the respondents from implementing the same and directing the respondents to treat the petitioner as continuing in his post of Deputy Mamlatdar as if the apprehended over of reversion had not been made at all and to accord to him all benefits on that basis.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner joined the service of the State of Gujarat as a Clerk in the Revenue Department from 20.8.1960 and was posted in the office of the Collector, Banaskantha District at Palanpur. The petitioner has passed sub service departmental examination in the year 1963. He has been confirmed in the cadre of clerk and he was promoted to the post of Deputy Mamlatdar in August 1973.

2.2 It has been stated in the petition that the State Government had framed Rules called the "Revenue Qualifying Examination Rules, 1970" by Government Notification dated 4.12.1970. Under these Rules the posts of Clerks and Circle Inspectors were grouped in the lower division of the subordinate revenue service and the posts of Aval Karkuns and Circle Officers were grouped in the Upper Division of the Subordinate Revenue Service. As per said Rules, a clerk was required to pass the revenue qualifying examination within a period of three years after completing five years and under the three attempt he can have a chance of promotion. It is an admitted fact that petitioner did not pass the examination under those rules.

2.3 It appears that the Government thereafter framed the Gujarat Lower Revenue Qualifying Examination Rules, 1978 prescribing a separate examination for promotion to the post of Deputy Mamlatdar. It may be noted that prior to these rules the persons who had passed the Revenue Qualifying Examination conducted under the Rules of 1970 were not only eligible for promotion to the post of Deputy Mamlatdar but also to the post of Mamlatdar. However, prior to Rules of 1978 no separate examination was prescribed for being eligible to the post of Mamlatdar in respect of persons who had passed the Revenue Qualifying Examination under the Rules of 1970.

2.4 It appears that the Government thereafter has passed a Resolution dated March 18, 1978, changing the format of the examination. It has been further stated in the petition that the Government has already framed the

Gujarat Lower Revenue Examination Qualifying Examination Rules, 1978 prescribing revenue qualifying examination in respect of promotion to the post of Deputy Mamlatdar in this behalf.

2.5 As the petitioner did not pass the examination as per Rules of 1970, and on apprehension that he is likely to be reverted by the Government from his existing post and therefore he has filed the present petition.

2.6 In this case the case of the petitioner is that if petitioner is reverted the Government desire to appoint some other persons though they have not passed the examination of 1978, they have still option to pass the said examination. On that apprehension the petitioner has filed this petition. The said petition was filed somewhere on 24th March, 1981.

3. When the matter was placed for hearing before this Court on 26.3.1981 this Court (Coram: Chief Justice B.J.Diwan & G.T.Nanavati, JJ. (as they were then) pleased to pass the following order:

> "Rule. To be heard alongwith Special C.A.No.2918/80. Interim relief in terms of Para 33. Mr.Shah appears for respondents and waives notice."

4. From the record it appears that petitioner was served and nobody appears on behalf of the petitioner and therefore this Court has requested Mr.Shalin Mehta, learned advocate to appear as amicus curiae in this matter and he has kindly consented to appear as amicus curiae in this behalf. He has addressed the Court on some point. He has also stated that the Hon'ble Supreme Court has admitted the matter being SCA No.4265/78 and this Court also similarly admitted the matter in SCA No.2918/80.

5. Ms.Nandini Joshi, learned AGP appearing on behalf of the Government has tried to support the stand of the Government. She has invited my attention to the affidavit dated 30.3.1982 filed by Shri R.K.Shah, Successor-in-Office, Collector, District Banaskantha, Palanpur.

6. However, before I decide the matter on the merits of the matter, Ms.Joshi, learned AGP on instructions from Shri P.L.Gadhvi, Deputy Mamlatdar, Collector's Office, Banaskantha District, Palanpur, who is also present in the Court and he has given instructions to learned AGP that petitioner has already retired on 30th April, 1999,

as Deputy Mamlatdar.

7. In view of the aforesaid position it is not necessary to decide the matter on the merits of the case because the petitioner is already retired from the service and therefore this petition has become infructuous.

8. In view of the same, I do not decide the matter on the merits of the case and therefore petition is disposed of as it has become infructuous. Rule is discharged. No order as to costs. Interim relief granted earlier shall stand vacated.

9. This Court is beholden to Mr.Shalin Mehta, learned advocate who has appeared as amicus curiae for the petitioner.

(K.M. Mehta, J.)
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